

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EPHRAIM BARR	:	CIVIL ACTION
	:	
vs.	:	
	:	
TROY LEVI, Warden, and	:	NO. 06-4683
FDC Philadelphia	:	

**MEMORANDUM AND ORDER**

**ROBERT F. KELLY, Sr. J.**

**MARCH 27, 2007**

This is a Bivens action<sup>1</sup> filed by Plaintiff Ephraim Barr, an inmate housed at the Federal Detention Center (FDC) Philadelphia. Plaintiff names as Defendants, Troy Levi, Warden, and FDC Philadelphia. He seeks restoration of his telephone privileges, a change in the prison rules with respect to legal telephone calls, and release from the Special Housing Unit.

Defendants have filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6) or in the alternative a motion for summary judgment.

With their motion, Defendants have filed "Exhibit 1" which contains a Declaration of Darrin Howard, together with numerous other documents. Because the statements in the Declaration are necessary for a determination as to whether or not Plaintiff exhausted his administrative remedies, that issue cannot be decided in the context of a motion to dismiss. Therefore, the pending motion shall be treated as a motion for summary judgment.

Plaintiff Ephraim Barr is given an additional 20 days from the date of this Memorandum and Order to file a Counter Declaration or other material for the Court's

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<sup>1</sup>Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971).

consideration in deciding the summary judgment motion.

BY THE COURT:

/s/ Robert F. Kelly  
ROBERT F. KELLY  
SENIOR JUDGE